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April 10, 2018

Hon. Mae A. D'Agostino,
United States District Judge
445 Broadway
Albany, NY 12207

Re: *Naomi Gonzales v. Agway Energy Services, LLC; Civil Action No. 5:18-CV-235*

Dear Judge D'Agostino:

On behalf of Agway Energy Services, LLC, we submit this response to Plaintiff's request to strike portions of Agway's reply brief, or alternatively, for leave to file a sur-reply brief.

Primarily, we respectfully disagree with the substance of the letter. Each of Plaintiff's points was raised and apparent in Defendant's initial memorandum of law. In fact, Plaintiff notes that Agway raised the very issue of which she complains in her brief in an attempt to argue that she misunderstood its import. (See Dkt. No. 32 at pp. 6-7). Further, Agway argued in its moving brief that

Plaintiff also purports to bring this matter on behalf of affected Pennsylvania customers, but does not name a class representative.... Since there is no named plaintiff that would satisfy the requirement of minimal diversity, the Court should dismiss for lack of subject matter jurisdiction. (citations omitted)(Dkt. No. 13, at p.11, fn. 13).

Agway thus raised the subject matter deficiencies with Plaintiff's complaint as part of its initial briefing.

Finally, although Plaintiff violated Your Honor's Individual Rules and Practices, Rule 2(C)(iv), which states that a "party wishing to file a sur-reply must submit a letter request, not to exceed **one** page" (emphasis in original), it then incorrectly complains that Agway improperly used "an 11.5 font size throughout its 17 page brief." As the lawyer who did the final edits of the document before filing, I checked and the text of the body and footnotes of reply brief were typed using Times New Roman, 12 point font.

To the extent the Court feels additional briefing is required, we respectfully request an opportunity to respond to any sur-reply from Plaintiff.

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Respectfully submitted,

BOND, SCHOENECK & KING, PLLC

s/ *Sharon M. Porcellio*

Sharon M. Porcellio

SMP/es

cc: All Attorneys of Record *(via ECF)*
John D. Coyle, Esq. *(via e-mail)*